



STATE OF CONNECTICUT

Attn.: Amy L. Rothstein
Assistant General Counsel
999 E Street NW.
Washington DC 20463

RE: Comment of REG 2014-09

Attorney Rothstein,

We are writing to comment on the above captioned matter on behalf of the Connecticut State Elections Enforcement Commission. Public Citizen raises strong points in favor of broadening the standards for evaluating when related businesses should be treated as separate for the purposes of pay-to-pay laws. The result in the *Chevron* case illustrates how the federal contractor ban on contributions can be easily evaded by technical legal maneuvering that leaves the intent of the law completely thwarted. In order for the law to be effective in its purpose, the Commission should adopt new criteria for dealing with business enterprises, families of businesses and commonly controlled businesses.

In Connecticut, we have similar limitations on contributions for state contractors and for good reason. Real harm was done to our electoral system and the public trust in our government by a series of pay-to-play scandals. In 1999, the State Treasurer pled guilty to federal racketeering and money laundering charges stemming from a kick-back scheme involving state pension investments. Many of the Treasurer's co-conspirators either pled guilty or were convicted on counts arising out of the public official bribery scheme and received terms of imprisonment. On June 21, 2004, Connecticut's Governor resigned after being accused of improperly accepting tens of thousands of dollars in gifts and services from state contractors in return for facilitating the award of several state contracts. He subsequently pled guilty to federal criminal charges. In 2005, a state senator pled guilty to federal bribery charges in connection with a kick-back scheme involving a non-profit organization. He too went to prison. These scandals received widespread press coverage, leading the media to dub the state "Corrupticut."

Connecticut responded to this parade of corruption with comprehensive campaign finance reform legislation, dramatically changing the way state officials could raise campaign funds and sharply limiting the role of special interest groups, including state contractors. The 2005 Reform Act banned certain state contractor and lobbyist contributions and instituted the landmark public campaign financing system, the Citizens' Election Program (the "CEP").

Our contractor limitations¹ restrict state contractors and principals² of state contractors from contributing to candidates and parties and to certain political committees. A state

¹ Conn. Gen. Stat. §§ 9-612 (f), *et seq.* & 9-704 (c).

² Principals are generally those individuals who control or own the business that has the state contract. They are defined as " (i) any individual who is a member of the board of directors of, or has an



STATE OF CONNECTICUT

contractor can be a person (that includes any legal entity of any kind) as well as the more particularly defined “business entity.” Connecticut’s definition of “business entity” provides that “corporations which are component members of a controlled group of corporations, as those terms are defined in Section 1563 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, *shall be deemed to be one corporation.*” (Emphasis added.)³ The definition of

ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has managerial or discretionary responsibilities with respect to a state contract, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.” § 9-612 (f) (1) (F).

³The term “controlled group of corporations” is defined in the Internal Revenue Code., 26 U.S.C. § 1563 which provides in relevant part:

Definitions and special rules

(a) Controlled group of corporations

For purposes of this part, the term “controlled group of corporations” means any group of—

(1) Parent-subsidiary controlled group

One or more chains of corporations connected through stock ownership with a common parent corporation if—

(A) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned (within the meaning of subsection (d)(1)) by one or more of the other corporations; and

(B) the common parent corporation owns (within the meaning of subsection (d)(1)) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

(2) Brother-sister controlled group

Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2)) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

(3) Combined group

Three or more corporations each of which is a member of a group of corporations described in paragraph (1) or (2), and one of which—

(A) is a common parent corporation included in a group of corporations described in paragraph (1), and also



STATE OF CONNECTICUT

“controlled group of corporations” includes four types of groups, all of which are interrelated stock corporations, with the common denominator being that they all have interrelated ownership interests. 26 U.S.C. § 1563. Under the Connecticut rule, if we applied it to the facts in *Chevron*, it is likely that Chevron would be found to be the same business entity as Chevron USA because of the interrelated stock ownership. For nonstock entities, the parent-subsidary problem is addressed by examining the ownership interests; if an individual has more than a 5% ownership interest in the parent company or the underlying subsidiary (or subsidiaries), then he or she would be considered a principal, and thus covered by the state contractor ban. See e.g. *In the Matter of a Complaint by Edward M. Snider*, File No. 2014-019.

The Connecticut approach has its advantages—it relies on bright-line criteria and it looks beyond the discrete legal entity that has the contract or that makes the contribution—but it also lacks the flexibility of the approach suggested by Public Citizen, which involves applying an indicia test. Such a test may capture more types of shell companies that are established to circumvent the law, as well as closely track the intent of the law. There is usually more than one way to solve a problem, of course. But we emphatically agree with the position of Public Citizen that the status quo, which enables such closely interrelated companies as Chevron and Chevron USA to so easily evade the federal contractor ban, *is a big problem*, not just because of the appearance of corruption that it creates, but because it creates an avenue for corruption, and can easily be used to circumvent and avoid meaningful financial disclosure of campaign spending, thereby denying the public an opportunity for review.

Thank you for your consideration.

Sincerely,
Michael J. Brandi, Executive Director and General Counsel
Shannon C. Kief, Legal Director
Joshua H. Foley, Staff Attorney

Connecticut State Elections Enforcement Commission
20 Trinity Street
Hartford, CT 06106
860-256-2940

(B) is included in a group of corporations described in paragraph (2).

(4) Certain insurance companies

Two or more insurance companies subject to taxation under section 801 which are members of a controlled group of corporations described in paragraph (1), (2), or (3). Such insurance companies shall be treated as a controlled group of corporations separate from any other corporations which are members of the controlled group of corporations described in paragraph (1), (2), or (3).